

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

TIANJIN MOTOR DIES CO., LTD.,	Case No. 19-cv-13215-MFL-APP
Plaintiff/Counter-Defendant,	Judge Matthew F. Leitman
v.	Mag. Judge Anthony P. Patti
DIETECH NORTH AMERICA, LLC,	<b>DEMAND FOR JURY TRIAL</b>
Defendant/Counter-Plaintiff.	

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**DIETECH’S COUNTERCLAIM AND JURY DEMAND**

Defendant/Counter-Plaintiff DieTech North America, LLC (“DieTech”), by its attorneys, Hickey Hauck Bishoff & Jeffers, PLLC, for its Counterclaim against Plaintiff/Counter-Defendant, Tianjin Motor Dies Co., Ltd. (“TQM”) and Jury Demand, states as follows:

**NATURE OF THE ACTION**

1. In this civil action, DieTech seeks to recover money damages, interest, attorneys’ fees and costs from TQM based on TQM’s breaches of contract arising out of a contract to manufacture and supply certain dies required to produce outer box side truck panels.

**PARTIES, JURISDICTION AND VENUE**

2. DieTech is a limited liability company organized under the laws of the State of Michigan with its principal place of business located in Roseville, Michigan.

DieTech's sole member is a limited partnership organized under the laws of the State of Michigan with its principal place of business located in Bloomfield Hills, Michigan, whose partners are citizens of Michigan and Connecticut. DieTech is therefore a citizen of Michigan and Connecticut.

3. Upon information and belief, TQM is a corporation organized under the laws of the People's Republic of China, TQM has its principal place of business in Tianjin, China, and TQM is a citizen of a foreign state.

4. This case is within the subject matter jurisdiction of this Court pursuant to 28 U.S.C. §1332 because the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and this case is between citizens of Michigan and Connecticut, on the one hand, and a citizen of a foreign state, on the other.

5. This case is also within the subject matter jurisdiction of this Court pursuant to 28 U.S.C. §1331. This dispute is governed at least in part by the United Nations Convention on Contracts for the International Sale of Goods ("CISG"), a treaty to which both the United States and the People's Republic of China are signatories. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367 over the state law claims alleged in this civil action because they are so related to the federal claim that they form part of the same case or controversy and derive from a common nucleus of operative facts.

6. This Court has personal jurisdiction over the parties to this civil action.

7. Venue is proper in this Court pursuant to 28 U.S.C. §1391.

### **FACTUAL BACKGROUND**

8. DieTech is a Roseville, Michigan-based company that sells dies and offers world-class engineering, construction, and tryout services for medium and large Class-A metal stamping dies.

9. TQM is a Chinese manufacturer and seller of metal forming dies and equipment. It is located in Tianjin, China.

10. In late 2016, representatives of DieTech and TQM met with representatives of General Motors (“GM”) to discuss opportunities to bid on large, Class A die projects.

11. Class A surfaces on an automobile are visible to a customer’s eye, and include side panels of pickup truck beds, fenders and hoods. Because the surface is visible to the customer’s eye, the requirements and tolerances for the dies that produce these parts, or the panels that are produced by the dies, are significantly greater than for dies that produce underbody parts or other parts that are not visible to the eye.

12. In January 2017, GM asked DieTech to quote on a die project to produce Class A heavy duty box side outer panels for Chevrolet Silverado and GMC Sierra vehicles (“GM Box Side Project”).

13. Although GM was advised that DieTech would be working with TQM on the GM Box Side Project, GM wanted a direct contractual relationship with DieTech.

14. Ultimately, DieTech entered into a contract with GM to supply it with certain dies required to produce Class A heavy duty box side outer panels for Chevrolet Silverado and GMC Sierra vehicles on the GM Box Side Project.

15. In connection with the GM Box Side Project, DieTech entered into a contract with TQM to manufacture and supply certain dies for the GM Box Side Project.

16. The contract between DieTech and TQM includes, among other things, a series of purchase orders for the dies that DieTech issued to TQM which TQM accepted without objection (“Contract”). A copy of the Contract is in TQM’s possession.

17. Pursuant to the terms of the Contract, TQM was obligated, among other things, to build, construct and tryout the dies to GM’s North American die standard (“GMNA Standard”); perform what is known as the “first panel to gage review” under the GMNA Standard at TQM’s facility in China; achieve a specified quality score for the panels produced from the dies manufactured and supplied by TQM; and deliver the dies to DieTech in a timely fashion, so DieTech could meet its contractual obligations to GM.

18. In late 2017, TQM advised DieTech that certain dies were ready to be shipped to DieTech under the Contract. In response, DieTech representatives visited TQM's facility in Tianjin, China to review the dies in late 2017 and early 2018. Contrary to TQM's claims, DieTech did not accept, approve, or buy off the dies during these visits.

19. In February 2018, TQM shipped these dies by boat from China to the United States, where they were transported via truck to DieTech's facility in Roseville, Michigan. It took several weeks for the dies to be transported by boat and truck, with the first dies arriving at DieTech's facility in April 2018 and subsequent dies arriving in the weeks thereafter.

20. In early 2018, TQM advised that the remaining dies were ready to be shipped to DieTech under the Contract. In response, DieTech representatives visited TQM's facility in Tianjin, China to review the dies in April 2018. Contrary to TQM's claims, DieTech did not accept, approve, or buy off the dies during this visit.

21. In April and May 2018, TQM shipped the remaining dies by boat from China to the United States, where they were transported via truck to DieTech's facility in Roseville, Michigan. It took several weeks for the dies to be transported by boat and truck, with the first dies arriving at DieTech's facility in June 2018 and subsequent dies arriving in the weeks thereafter.

22. After the dies arrived at DieTech and DieTech started working with

them, including attempting to put them into presses to make sample panels, it became increasingly clear that the dies were wholly inadequate, deficient and nonconforming and that TQM had materially and fundamentally breached its obligations to DieTech under the Contract.

23. TQM's material and fundamental breaches of the Contract include, but are not limited to, (a) failing to build, construct and tryout the dies to the GMNA Standard, (b) failing to satisfy the anticipated die conditions for the first panel to gage review, (c) failing to achieve the required quality level and score in connection with the first panel to gage review, and (d) failing to deliver the dies to DieTech in a timely manner.

24. TQM knew or could not have been unaware of the inadequacies, deficiencies and nonconformities with the dies and the material and fundamental breaches of the Contract at the time the dies were shipped to DieTech, yet it did not disclose these things to DieTech.

25. DieTech informed TQM of the inadequacies, deficiencies and nonconformities with the dies within a reasonable time after they were discovered.

26. TQM was not interested in fixing or remedying the inadequacies, deficiencies and nonconformities with the dies.

27. Nor could it do so in a timely manner because that would have required the dies to be sent back to China via ship and truck, which would have taken several

weeks, if not months.

28. DieTech could not afford this unreasonable delay because it had its own deadlines to meet under its contract with GM that could not be moved, including a key milestone date for certain dies known as the Metal Requirement Date, or “MRD.” MRD is a key milestone date because it is the date that the dies are to produce panels of sufficient quality to be used in the manufacture of prototype vehicles on the assembly line. Failure to meet this deadline would have had catastrophic consequences to DieTech, severely damaged its relationship with GM, and exposed DieTech potentially to millions of dollars in damages from GM because it could have delayed GM’s production of Chevrolet Silverado and GMC Sierra vehicles.

29. In order mitigate its damages, and satisfy its contractual obligations to GM, DieTech performed significant rework on the dies in order to correct the inadequacies, deficiencies and nonconformities with them. This remedial work continued for weeks and required a significant amount of time and labor by DieTech employees.

30. DieTech incurred millions of dollars in costs and expenses correcting the inadequacies, deficiencies and nonconformities with the dies, totaling approximately \$8.1M.

31. DieTech documented its rework, and the costs and expenses it incurred

in performing it, and provided that documentation and information to TQM, but TQM essentially ignored it.

32. TQM was more interested in receiving payment for what it claimed were amounts allegedly due under the Contract, despite its material and fundamental breaches of the Contract.

33. DieTech offered to mediate the parties' differences on several occasions, but TQM refused to do so and instead filed this lawsuit.

**Count I – Breach of Contract regarding the Dies (under the CISG)**

34. DieTech restates and incorporates all of the preceding paragraphs as if set forth fully herein.

35. The Contract between DieTech and TQM regarding the GM Box Side Project is valid and binding.

36. DieTech paid approximately \$5.1M to TQM under the Contract.

37. DieTech otherwise performed all of its obligations under the Contract, and all conditions precedent to the enforcement of the Contract, if any, have been satisfied.

38. TQM has materially and fundamentally breached the Contract by, among other things, (a) failing to build, construct and tryout the dies to the GMNA Standard, (b) failing to satisfy the anticipated die conditions for the first panel to gage review, (c) failing to achieve the required quality level and score in connection



with the first panel to gage review, and (d) failing to deliver the dies to DieTech in a timely manner.

39. DieTech has suffered damaged in excess of \$8.1M because of TQM's material and fundamental breaches of the Contract.

40. DieTech's damages were or should have been foreseeable to TQM.

41. TQM is liable to DieTech for its damages.

42. DieTech elects to pursue its remedies under the CISG, including damages under Article 74 of the CISG.

**Count II – Breach of Contract regarding the Dies (under Michigan Law)**

43. DieTech restates and incorporates all of the preceding paragraphs as if set forth fully herein.

44. The Contract between DieTech and TQM regarding the GM Box Side Project is valid and binding.

45. DieTech paid approximately \$5.1M to TQM under the Contract.

46. DieTech otherwise performed all of its obligations under the Contract, and all conditions precedent to the enforcement of the Contract, if any, have been satisfied.

47. TQM has materially and fundamentally breached the Contract by, among other things, (a) failing to build, construct and tryout the dies to the GMNA Standard, (b) failing to satisfy the anticipated die conditions for the first panel to

gage review, (c) failing to achieve the required quality level and score in connection with the first panel to gage review, and (d) failing to deliver the dies to DieTech in a timely manner.

48. DieTech has suffered damaged in excess of \$8.1M because of TQM's material and fundamental breaches of the Contract.

49. DieTech's damages were or should have been foreseeable to TQM.

50. TQM is liable to DieTech for its damages.

**RELIEF REQUESTED**

WHEREFORE, DieTech respectfully requests that this Court enter judgment in its favor and against TQM as follows:

- A. For compensatory damages in an amount to be determined at trial;
- B. For pre-judgment interest on any recovery by DieTech;
- C. For the costs and expenses of suit incurred by DieTech;
- D. For attorneys' fees and costs; and
- E. For such other and further relief in favor of DieTech as the Court deems just and proper.

**JURY DEMAND**

DieTech hereby demands a jury trial on all issues and claims so triable.

Dated: January 3, 2020

Respectfully submitted,

Hickey Hauck Bishoff & Jeffers, PLLC

/s/ Thomas S. Bishoff

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